TABLE OF CONTENTS

	Page
Opinion Below	1
Statement of Juridiction	1
Questions Presented	2
Question 1	2
Question 2	2
Question 3	2
Constitutional Provisions Involved	2
Statement of case	3
Reasons Why This Writ Should Be Granted	4
Conclusion	9
Certificate of Service	9
Appendix A	10
Appendix B	11
Appendix C	12
Appendix D	13

TABLE OF AUTHORITIES

Cases

Connally v. General Construction Co., 269 U.S. 385 6

Czarra v. Board of Medical Supervisors, 25 App DC 442 6

Lansetta v. New Jersey, 396 U.S. 455 6

State v. DeHass, 10 Ohio St., 2d 230 8

Stoutenburgh v. Frazier, 16 App. DC 229 6

United States v. Reese, 92 U.S. 214 5

CONSTITUTIONS

Constitution of the United States

Amendment V ..... Appendix A 10

Amendment VI ..... Appendix B 11

Amendment XIV ..... Appendix C 12

Statutes and Rules

Ohio Revised Code Section 2917.25 ..... Appendix D 13

16 Am Jur 2d Constitutional Law Section 552, pages 951 & 952 5

IN THE

Supreme Court of the United States

October Term, 1972

No. _____

Marie Baldassaro,

Petitioner,

vs.

The State of Ohio,

Respondent.

Petitioner herein, Marie Baldassaro, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio, denying certiorari entered June 9, 1972.

STATEMENT OF JURISDICTION

The decree of the Supreme Court of Ohio was entered June 9, 1972, denying certiorari.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3) and this Court's rule 19 (a), inasmuch as the petitioner has been denied due process of law under Amendment XIV of the Constitution of the United States and her rights have been violated by testimony illicited by a grand jury in violation of the self-incriminating clause of Amendment V to the Constitution of the United States.

QUESTIONS PRESENTED

1. Section 2917.25, Ohio Revised Code is unconstitutional because it is indefinite, uncertain and vague and as such denies a defendant due process of law.

2. The involuntary statements of the petitioner before a grand jury under oath without being advised of her privilege against self-incrimination.

3. The refusal of an appellate court to review all questions of law including the question of "manifest weight of the evidence" is arbitrary and unreasonable and a violation of due process of law.

APPLICABLE CONSTITUTIONAL PROVISIONS, STATUTE OF THE OHIO REVISED CODE

This case involves the following:

Constitutional Provisions

1. Amendment V to the Constitution of the United States more particularly dealing with "self incrimination", which is appended hereto as Appendix "A".
2. Amendment VI to the Constitution of the United States more particularly dealing with the "right to counsel" which is appended hereto as Appendix "B".
3. Amendment XIV to the Constitution of the United States more particularly Section 1 thereof, which is appended hereto as Appendix "C".

State Statute

1. Ohio Revised Code Section 2917.25, which is appended hereto as Appendix "D".

STATEMENT OF THE CASE

The petitioner, Marie Baldassaro, was indicted by the Franklin County Grand Jury and charged with one (1) count of Perjury in violation of Section 2917.25 of the Revised Code of Ohio.

Count one (1) of said indictment charged that the petitioner did "on or about the 11th day of March, 1970, within the County of Franklin aforesaid, appeared as a witness before the Grand jury of Franklin County, Ohio, which was investigating possible violations of Section 2917.01, Revised Code of Ohio, and after having been sworn on oath lawfully administered, wilfully and corruptly, orally stated a falsehood as to a material matter in said cause as follows:

(a) That she had not met nor did she know any present or former officers of the Columbus Police Department.

(b) That she had never made any payments to any present or former officers of the Columbus Police Department;

said testimony being material to said cause and being false in the following respects:

(a) She has met and she does know certain present or former officers of the Columbus Police Department,

(b) She has made payments to certain present or former officers of the Columbus Police Department.

contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

On March 11, 1970, Petitioner, Marie Baldassaro, was incarcerated in the Franklin County Correctional Institute for Women, under sentence thereto. On the

above date, she was brought to the Courthouse and ushered before the Grand Jury and interrogated concerning the matters there under investigation by the Grand Jury.

The Petitioner was first questioned before she was allowed to see counsel at her request, a recess was taken and she was permitted to talk with legal counsel for approximately ten minutes before being recalled before the Grand Jury.

The allegedly false statements upon which this indictment is predicated were made during this session of the Grand Jury.

At the end of the State's case paragraph (b) of the indictment was dismissed on Defendant's Motion for lack of proof.

REASONS WHY THIS WRIT SHOULD BE GRANTED

As to Question 1.

Section 2917.25, Ohio Revised Code, is so indefinite, uncertain and vague that its application has deprived petitioner of due process of law under Amendment XIV to the Constitution of the United States.

The petitioner was charged with making false statements concerning bribes to police officers which she denied and the petitioner claimed she did not know policers. These statements were made to the Grand Jury.

To show how indefinite, uncertain and vague the statute is the indictment states she gave false testimony in the following respects:

(A) she met and does know certain present or former officers of the Columbus Police Department.

(B) she made payments to certain present or former officers of the Columbus Police Department.

During the course of trial consideration of "B" was deleted for lack of evidence from jury consideration. In what way is "A" a material matter?

The question of determination of what is material and what isn't, has not been given a legislative definition and allows, the prosecution, the trial court and the jury to define a statute which can have a great many interpretations depending on what axe you have grind with an individual.

The point in the case at hand is well stated in *United States v. Reese*, 92 U.S. 214 from which we quote from page 22 as follows:

> "It would certainly be dangerous if the legislative could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and should be set at large."

16 Am Jur 2d Constitutional Law Section 552, pages 951 and 952, states in material part as follows:

> "It is a general principal of law that a statute must be definite to be valid. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. ****
>
> The due process requirement of definiteness is especially important in its application to penal and criminal statutes. The legislature, in the exercise of its power to declare what shall constitute a crime or punishable offense, must inform the citizen with reasonable precision what acts it intends to prohibit, so that he may have a certain, understandable rule of conduct and know what acts it is his duty to avoid. The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial

for an offense of whose nature he was given no fair warning."****

The Courts have uniformly held that statutes should be defined by the legislative body. In this case where has the legislative body defined "material matter," so that the individual knows with certainty the criminal act he has committed.

> "A provision of an act of congress applicable to the District of Columbia, declaring that "all suspicious persons" may be prosecuted as criminals, but not defining the "suspicion", of which an accused may be the object, is unconstitutional *Stoutenburgh v. Frazier*, 16 App. DC 229. Also see *Lansetta v. New Jersey*, 396 U. 455; *Connally v. General Construction Co.*, 269 U.S. 385; *Czarra v. Board of Medical Supervisors*, 25 App. DC 443.

It might be further noted that a statute can be valid in part and invalid as to other parts the question involved herein applies to the portion of the statute relating to a "material matter."

As to Question No. 2.

The record reflects that the petitioner was in custody at the time she appeared before the Franklin County Grand Jury. This would reflect she was not there voluntarily. There is no evidence she was subpoenaed to testify.

The record further reflects she was administered an oath by the foreman and was questioned for a period of time. The record does not state she was advised of her constitutional rights commonly referred to as the "Miranda Warning."

The record reflects that after the questioning had proceeded her attorney arrived and she was allowed to converse with him before continuing.

Ohio does not have immunity statutes covering testimony of witnesses.

Under the circumstances presented here the witness was not a voluntary witness, Ohio cannot grant immunity, and she was not advised of her constitutional rights.

It is denial of due process of law to take a person into custody, force her before the grand jury to testify and certainly denies her constitutional guarantees provided by the V Amendment of the United States Constitution.

It is further a denial of due process of law not to inform a person of the area in which the grand jury intends to question a witness.

Since immunity statutes stands instead of V Amendment privilege against self-incrimination, it is fair to say that where there are no immunity statutes "Miranda Warnings" should be advised to witness who are to testify before a grand jury, so that V Amendment guarantees are not violated.

Even though the witness answers questions which might lead to a prosecution for perjury, where she has been denied V Amendment guarantees, due process of law has been violated in asking the very first question.

The distinction between cases appears to be where immunity from prosecution exists and where immunity is granted the witness does not have the right to refuse to testify, on the other hand where immunity cannot be afforded a witness before the grand jury it is mandatory that "Miranda Warnings" be afforded the witness.

As to Question No. 3.

The State of Ohio appellate review is a denial of due process of law as provided by the XIV Amendment of the United States Constitution.

The Franklin County Court of Appeals in its reviewing decision stated that it could not review a case based on the manifest weight of the evidence. Citing as authority, *State v. DeHass*, 10 Ohio St., 2d 230 which held as follows:

> "A reviewing court may not reverse a judgment of conviction in a criminal case in a trial court, where the record shows that a guilty verdict was returned by a jury on sufficient evidence and there was no prejudicial error occurred in the actual trial of the case or in the instructions given the jury by the court."

To enable a defendant full protection of due process of law all questions raised by appeal should be review by an appellate court even the question of "manifest weight of the evidence" or to rephrase "the jury verdict is contrary to law."

To arbitrarily state that a reviewing court may not review the evidence in total and determine in a criminal case whether the State has produced evidence beyond a reasonable doubt as to the guilt of the defendant removes from consideration of a reviewing court a substantial question of law.

The constitutional guarantees cannot arbitrarily be abandoned by the Ohio Supreme Court. There are many instances where jury verdicts are contrary to law; however, the trial court will refuse a directed verdict.

Where an appeal is perfected all questions of law should be reviewed when appealed and no court shall arbitrarily deny a defendant the right of review of all questions of law properly raised. One single denial to rule on any question of law deprives a defendant of due process of law.

CONCLUSION

It is obvious the questions raised by the petitioner clearly puts into issue the violation of safeguards provided by the Constitution of the United States. It is of great importance for citizens of the State of Ohio and elsewhere that the constitutionality of a state statute be decided and further under the circumstances that prevail herein be decided so that other persons in the future are safeguarded in that they not be denied due process of law, the right to counsel and the involuntary testimony before a grand jury without first being advised of their constitutional rights where the State cannot and does not have the right to grant immunity.

Respectfully submitted,
JERRY WEINER
Attorney for Petitioner
171 East Livingston Ave.
Columbus, Ohio 43215
WILLIAM S. FRIEDMAN
Member of Bar Supreme Court of the United States
88 East Broad Street
Columbus, Ohio 43215

CERTIFICATE OF SERVICE

A Copy of the foregoing "Petition For Certiorari" was hand delivered in triplicate to the Office of the Franklin County Prosecutor this 4th day of October, 1972, at the Franklin County Court House, Mound and High Streets, Columbus, Ohio 43215.

JERRY WEINER
Attorney for Petitioner

APPENDIX "A"

Amendment V to the Constitution of the United States

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX "B"

Amendment VI to the Constitution of the United States

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

APPENDIX "C"

Amendment XIV to the Constitution of the United States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX "D"

Ohio Revised Code Section 2917.25. Perjury.

No person, either orally or in writing, on oath lawfully administered, shall wilfully and corruptly state a falsehood as to a material matter in a proceeding before a court, tribunal, or officer created by law, or in a matter in relation to which an oath is authorized by law, including an oath taken by any person making any affidavit required for verifying or filing a nominating, initiative, supplementary, or referendum petition, or part thereof, or including an oath taken by any person soliciting signatures and making any affidavit required for the verifying of any written or printed complaint for the removal of a public officer.

TABLE OF CONTENTS

APPENDIX E ---------- 1

APPENDIX F ---------- 13

APPENDIX E

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO

No. 71-257

STATE OF OHIO,

Plaintiff-Appellee,

vs.

MARIE BALDASSARO,

Defendant-Appellant.

DECISION

Rendered on December 14, 1971

MR. GEORGE C. SMITH, Prosecuting Attorney,
MR. C. WILLIAM BROWNFIELD, JR., Assistant,
Franklin County Courthouse,
Columbus, Ohio,
For Plaintiff-Appellee.

MR. H. ALFRED GLASCOR,
233 South High Street,
Columbus, Ohio,

and

MR. WILLIAM TOLER,
867 Mt. Vernon Avenue,
Columbus, Ohio 43203,
For Defendant-Appellant.

REILLY, J.

This is an appeal from a sentence and judgment of the Court of Common Pleas, Franklin County, Ohio, rendered June 21, 1971.

Appellant was indicted by the Franklin County Grand Jury and charged with one (1) count of perjury in violation of R. C. 2917.25. The indictment read as follows:

> "The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, in the name and by the authority of the State of Ohio, upon their oath do find and present that Marie Baldassaro late of said County, on or about the 11th day of March in the year of our Lord, one thousand nine hundred and seventy within the County of Franklin aforesaid, appeared as a witness before the Grand Jury of Franklin County, Ohio, which was investigating possible violations of Section 2917.01, Revised Code of Ohio, and after having been sworn on oath lawfully administered, wilfully and corruptly, orally stated a falsehood as to a material matter in said cause as follows:
>
> "(a) That she had not met nor did she know any present or former officers of the Columbus Police Department,
>
> "(b) That she had never made any payments to any present or former officers of the Columbus Police Department;
>
> "said testimony being material to said cause and being false in the following respects:
>
> "(a) She has met and she does know certain present or former officers of the Columbus Police Department,
>
> "(b) She has made payments to certain present or former officers of the Columbus Police Department,
>
> "contrary to the statute in such case made and

provided and against the peace and dignity of the State of Ohio."

Appellant was incarcerated in the Franklin County Correctional Institute for Women, March 11, 1970, when she was transported to the courthouse and interrogated by the grand jury.

At the outset, the following testimony of Mr. John W. Saffell, assistant official court reporter, is noteworthy (R 9-14):

"Q. Particularly on the 11th day of March, 1970, were you working in the Franklin County Courthouse? A. Yes.

"Q. And, where, sir, were you working then? A. Grand Jury.

"Q. And, where does the Grand Jury meet, sir, or did it meet back in March of 1970? A. On the first floor.

"Q. In this Courthouse, sir? A. In this Courthouse.

"Q. What county is that located in? A. Franklin.

"Q. On that day, March 11, 1970, sir, when you were the official reporter for the Franklin County Grand Jury, did you have occasion to see an individual known to you by name as Marie Baldassaro? A. Yes.

"Q. And, where did you see Miss Baldassaro? A. Downstairs while taking Grand Jury.

"Q. I will ask you to look about the Courtroom today, sir, and see if that individual who is known to you by name as Marie Baldassaro is in this Courtroom. A. Yes, sir.

"Q. Would you point her out, please? A. The lady sitting over here.

"Mr. O'Grady: Let the record reflect he has indicated the Defendant, Marie Baldassaro.

"Q. (By. Mr. O'Grady) You said, Mr. Saffell, that Miss Baldassaro appeared in the Grand Jury room on March 11, 1970. Was the Grand Jury present, sir? A. Yes.

"Q. Were there any prosecutors present at the Grand Jury room at that time? A. Yes.

"Q. Was an oath administered to Miss Baldassaro when she was present in the Grand Jury room? A. Yes.

"Q. Then who administered the oath, sir? A. The Foreman.

"Q. Are you familiar, sir, with the oath as it is administered in Grand Jury proceedings? A. Just that they are sworn to tell the truth.

"Q. Had you been present in prior Grand Jury proceedings when witnesses were sworn? A. Many.

"Q. After Miss Baldassaro was sworn as a witness, sir, was she advised as to what inquiries the Grand Jury at that time was making, what matters were under investigation? A. Yes, sir.

"Q. Do you recall, sir, what general matters were under investigation by the Grand Jury at that time? A. Numbers.

"Q. At any time during the proceedings was Miss Baldassaro permitted to consult with counsel? A. Yes.

"Q. And, how was that accomplished? A. A recess. She was given—had a recess taken and she was allowed to go out.

"Q. Upon returning to the Grand Jury room, did she indicate she had consulted with her counsel? A. Yes.

"Q. During the proceedings, sir, was the name Melvin Helmandollar mentioned to Miss Baldassaro? A. Yes.

"Q. Was she asked if she knew Mr. Helmandollar? A. Yes.

"Q. Did she indicate whether she did or did not know Mr. Helmandollar? A. She indicated she didn't

"Q. The woman on the end did not hear you. A. She indicated she didn't.

"Q. Was Miss Baldassaro asked if she knew any members of the Columbus Police Department who were either officers at that time on March of 1970,

or had been officers of the Columbus Police Department? A. Yes.

"Q. And, what was her reply? A. Some she knew by pictures in the paper.

"Q. Was she asked whether she had ever had occasion to make any payments to any officers of the Columbus Police Department? A. Yes.

"Q. And, what was her reply? A. No.

"Q. Do you recall, sir, the specific question, 'Do you know any members of the Columbus Police Department who are either officers now or have been officers on the Columbus Police Department?' Do you recall that being asked of Miss Baldassaro? A. Yes.

"Q. And, do you recall her reply?

"Mr. O'Grady: Your Honor, may he consult his record to refresh his recollection unless he indicates he can recall a specific answer?

"Mr. Glascor: I think he has to be exhausted first before he uses any notes. I object.

"The Court: Do you recall the specific answer?

"The Witness: What was the question?

"Q. (By Mr. O'Grady) The answer to the question 'Do you know any members of the Columbus Police Department who are either officers now or have been officers on the Columbus Police Department? A. Yes, I remember that question being asked.

"Q. Do you remember the specific answer being given to that question by Miss Baldassaro? A. I believe she was hesitant —

"Mr. Glascor: Objection. If the Court please, it is not responsive. Her reaction is not part of the question.

"Q. (By Mr. O'Grady) Just if you recall —

"The Court: Do you recall what her specific answer was?

"The Witness: I don't recall exactly.

"The Court: You may then refer to your notes.

"The Witness: What was the question again?

"Q (By Mr. O'Grady) 'Do you know any mem-

bers of the Columbus Police Department who are either officers now or have been officers on the Columbus Police Department? A. The question being asked?

"Q. That was the question being asked. A. Yes, that was the question asked.

"Q. And, after consulting in your notes, sir, do you know the answer that Miss Baldassaro gave to that question? A. Yes.

"Q. What was her answer? A. 'No.'

"Mr. O'Grady: Your witness."

Mr. George Snodgrass, foreman of the grand jury before which appellant appeared, identified appellant, testified that she was informed of "the general nature of the investigation that the Grand Jury was conducting;" and that the foregoing testimony was taken (R 22-24).

Officer Melvin Helmandollar testified as a witness for the prosecution and stated that he had been on the vice squad, "more specifically, gambling" (R 30); and in such capacity he knew appellant (R 32-33). He stated that he arrested appellant in the fall of 1967 (R 34-37); and that sometime before the arrest she had given Helmandollar or his superior who was with him, twenty-five dollars (R 41). Officer Phillip L. Henry, also formerly a vice squad member, testified as a prosecution witness that he visited the beauty salon of Mrs. Mietta, appellant's sister, with Officer Robert Brodt, and was "more or less" introduced to appellant while there (R 60). He further testified that Mrs. Mietta visited Officer Brodt in the hospital when Officer Henry was also there; but he could not remember whether appellant was present at that time (R 61).

Appellant testified at the trial. She remembered being shown a list of Columbus police officers at the grand jury hearing, but was not shown pictures (R 71-72). She

denied knowing their names (R 72). Further, she denied knowing Melvin Helmandollar by name until he appeared in court (R 80). She did not recall meeting Officer Brodt at her sister's beauty shop; and said "I really don't know" in response to a question whether she visited him at Mercy Hospital (R 80).

The prosecutor inquired into appellant's arrest record to test her credibility. (The jury was instructed as to the purpose of this testimony [R 85].) She was asked: "And over twenty years, how many times would you say you were arrested in connection with numbers?" She replied: "Just once." (R 87). Whereupon, the state produced the record to show she was arrested three times (R 87); and was convicted twice (R 88). Finally, near the end of the cross-examination of appellant, the following testimony ensued (R 96-99):

> "Q. What part of the city did you have your operation in when you worked? A. I don't know how to answer that.
>
> "Q. Well, suppose we divide the city up into east, west, north, and south. Could you then answer what portion of the city your operation was located in when you were in fact operating? A. If the Court please, do I have to answer these?
>
> "Mr. Glascor: Just a minute, please.
>
> "Your Honor, I object unless it specifies the time of an arrest or conviction, not just generally, because we would take the Fifth Amendment on that.
>
> "Mr. O'Grady: I only mean, Mr. Glascor, during the time when Miss Baldassaro indicates she was operating and had been arrested as a result of the operation.
>
> "Mr. Glascor: Let's be specific on it.
>
> "The Court: Narrow it down to arrest times and conviction times.
>
> Mr. Glascor: That's correct.
>
> "Q. (By Mr. O'Grady) Particularly then, at the

time of your arrest, which resulted in the last conviction from which you were serving a sentence in 1970, that arrest being in 1969, what portion of the City of Columbus were you operating in at that which time lead up to that arrest? A. Do I have to answer that question?

"The Court: Yes, ma'am.

"The Witness: Well you don't have any particular place.

"Q. (By Mr. O'Grady) Would it be — A. You — We can work all over Columbus or any place.

"Q. Not what you can do, ma'am; what you were specifically doing at that time. A. I was —

"Q. Were you making collections in a specific place? A. I was driving.

"Q. And, that would have been at a specific place, would it not? A. I guess.

"Q. And, do you know where it was that you were stopped and were arrested? A. On Woodland Avenue.

"Q. And, in what part of the city is that? A. What year was this?

"I don't know.

"Q. July 31, 1969, arrested by Officers Craft and Hawk at Woodland and Maryland. Does that refresh your recollection? A. Yes.

"Q. And, what part of the city is that? A. East, isn't it?

"Q. Do you recall, Miss Baldasarro, being asked in front of the Franklin County Grand Jury on March 11, 1970, this question: 'Do you know any members of the Columbus Police Department who are either officers now or have been officers on the Columbus Police Department'?

"Mr. Glascor: Object, if the Court please, unless he reads the answer — question and the answer.

"The Court: I will overrule the objection.

"Q. (By Mr. O'Grady) Do you recall being asked that question? A. I really can't remember. I mean, it was so much at the time they had asked me.

"Q. Do you deny that the question was asked? A. No, I wouldn't. I don't really know if they asked it or not.

"Q. Do you recall your reply, 'No'? Do you recall giving that answer to the Grand Jury? A. No.

"Q. Well, you are saying no and you are shaking your head. Does that mean you do not recall it or what? A. I don't think I remember them asking me that question.

"Mr. O'Grady: That is all, ma'am."

The Court, at the close of the case for both sides, dismissed part (2) of the indictment relating to false testimony concerning payment to police officers (R 103). The jury returned a verdict of guilty as charged in paragraph (a) of the indictment (R 118), as to appellant's acquaintance with police officers.

Appellant assigns as error that, "The verdict of the jury was against the manifest weight of the evidence and contrary to law." The substance of the error assigned is that the question asked appellant concerning her acquaintance with Columbus police officers did not apprise her that more than acquaintance by name was implicity therein; and that there were insufficient corroborating circumstances to warrant conviction.

R. C. 2917.25, in pertinent part, reads as follows:

"No person, either orally or in writing, on oath lawfully administered, shall willfully and corruptly state a falsehood as to a material matter in a proceeding before a court, tribunal, or officer created by law, or in a matter in relations to which an oath is authorized by law, * * *"

Further, R. C. 2945.62 states that:

"Perjury must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances."

The testimony relating to the indictment was given at a lawfully convened proceeding of the Franklin

County Grand Jury, under an oath administered by the foreman, pursuant to R. C. 2939.13. Appellant's acquaintance with police officers is presumed to have been a material matter in such proceeding. Note *State* v. *Joseph* (1950), 90 Ohio App. 427, syllabus 1:

> "False testimony, to constitute perjury, must relate to a material matter in the action in which such testimony is given."

Hence, the key elements in this case relate to the willful and corrupt intent of the witness. In that context, it is significant that the testimony of Melvin Helmandollar (R 29-46) and Phillip L. Henry (R 56-62) indicates that appellant did know several Columbus police officers prior to the grand jury hearing. Furthermore, there was testimony that she had given money to Officers Helmandollar or Stevens (R 41) as a gift. The question referred to nameless acquaintances. Moreover, appellant was informed of the general nature of the proceeding (R 23).

A careful review of the record discloses sufficient evidence to support the jury's finding that, despite any possible confusion or tension resulting from her incarceration, the substance of the question was understood by appellant. Further, the trial court correctly instructed the jury concerning their function, as to the credibility of the witnesses (R 109-110):

> "You, ladies and gentlemen, are the sole judges of the facts, the credibility of the witnesses, and the weight of the evidence. To weigh the evidence, you must consider the credibility of the witnesses. You will apply the tests of truthfulness which you apply in your daily lives. These tests include the appearance of each witness upon the stand; his or her manner of testifying; the reasonableness of the testimony; the opportunity he or she had to see, hear and know the things concerning which he or

she testified; his or her accuracy of memory; frankness, or lack of it; intelligence; interest and bias, if any, together with all of the facts and circumstances surrounding that testimony. Applying these tests you will assign to the testimony of each witness such weight as you deem proper.

"You are not required to believe the testimony of any witness simply because he or she was under oath. You may believe or disbelieve all or any part of the testimony of any witness. It is your province to determine what testimony is worthy of belief and what testimony is not worthy of belief. The testimony of the Defendant is to be weighed by the same rules that you apply to other witnesses. You may consider that she has a direct interest in the result of this prosecution; however, you may not reject her testimony simply because she is the Defendant."

The jury weighed the evidence and considered the credibility of the witnesses. This was the prerogative of the jury.

The Supreme Court wrote, in the syllabus of *State* v. *Courtright* (1902), 66 Ohio St. 35:

"It is a general rule, that to warrant a conviction under an indictment for perjury, there should be at least one witness to the *corpus delicti*, or the falsity of the matter assigned as perjury, and that the testimony of such witness be corroborated, either by another witness, or by circumstantial evidence sufficiently strong to satisfy the jury beyond a reasonable doubt of the guilt of the accused."

There was testimony as to appellant's statement; and also relating to personal relationships, which the jury could have found contravened such statement. Appellant testified that she did not recall her answers. There was no evidence, however, presented to rebut the prosecution's case. Hence, the corroboration was sufficiently

strong to satisfy the jury beyond a reasonable doubt concerning appellant's guilt.

The function of this court in this case is well defined. The syllabus, in the case of *State* v. *DeHass* (1967), 10 Ohio St. 2d 230, holds as follows:

"1. On the trial of a case, either civil or criminal, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.

"2. A reviewing court may not reverse a judgment of conviction in a criminal case in a trial court, where the record shows that a verdict of guilty was returned by a jury on sufficient evidence and where no prejudicial error occurred in the actual trial of the case or in the instructions given the jury by the court."

In summation, the trial court correctly ruled that as to the first part of the indictment, concerning whether appellant knew any present or former Columbus police officers, reasonable minds could come to different conclusions based upon proof beyond a reasonable doubt. The jury weighed the evidence; and, accordingly, rendered a verdict. This was within the province of the jury.

Therefore, for the foregoing reasons, appellant's assignment of error is overruled; and the judgment of the trial court is affirmed. Whereupon, this appeal is dismissed.

STRAUSBAUGH AND WHITESIDE, JJ., concur.

APPENDIX F

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,

City of Columbus.

1972 TERM

To wit: June 9, 1972

No. 72-202

MOTION FOR LEAVE TO APPEAL FROM THE COURT OF APPEALS

for Franklin County

STATE OF OHIO,

Appellee,

vs.

MARIE BALDASSARO,

Appellant.

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by H. Alford Glascor.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this ___ day of _____ 19___.

_____

Clerk

_____

Deputy

TABLE OF CONTENTS

	Page
Statement of the Case	1
Statement of the Facts	2
Argument:	
As to Question 1	5
As to Question 2	8
As to Question 3	9
Conclusion	10
Certificate of Service	10
Appendix A	11

TABLE OF AUTHORITIES

	Page
Cases	
Miranda v. *Arizona* (1966), 86 S.Ct. 1602	8
State v. *DeHass* (1967), 10 Ohio St. 2d 230	9
Statutes and Rules	
Ohio Revised Code Section 2917.01	1
Ohio Revised Code Section 2917.04	11
Ohio Revised Code Section 2917.25	5
Ohio Revised Code Section 2939.13	6
16 Am. Jur. 2d, Constitutional Law, Section 552, pages 951 & 952	7

In the Supreme Court of the United States

OCTOBER TERM, 1972

NO. .....

MARIE BALDASSARO,
Petitioner

— VS —

THE STATE OF OHIO,
Respondent

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The petitioner, Marie Baldassaro, was indicted by the Franklin County Grand Jury and charged with one (1) count of Perjury in violation of Section 2917.25 of the Revised Code of Ohio.

Count one (1) of said indictment charged that Marie Baldassaro did "on or about the 11th day of March, 1970, within the County of Franklin aforesaid, appear as a witness before the Grand Jury of Franklin County, Ohio, which was investigating possible violations of Section 2917.01, Revised Code of Ohio, and after having been sworn on oath lawfully administered, wilfully and corruptly, orally stated a falsehood as to a material matter in said cause as follows:

> "(a) That she had not met nor did she know any present or former officers of the Columbus Police Department.

"(b) That she had never made any payments to any present or former officers of the Columbus Police Department;

"said testimony being material to said cause and being false in the following respects:

"(a) She has met and she does know certain present or former officers of the Columbus Police Department,

"(b) She has made payments to certain present or former officers of the Columbus Police Department,

"contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio."

Marie Baldassaro subsequently appeared with her retained counsel in the Common Pleas Court of Franklin County, Ohio, before Honorable Frederick T. Williams, Judge, and a jury duly impaneled and sworn, for the trial of her cause. At the conclusion of the trial, the defendant was found guilty as charged in paragraph (a) of the indictment; paragraph (b) having been dismissed by the Court at the close of the case by both sides. The defendant was sentenced to the Ohio State Reformatory for Women according to law; however, she retained her freedom subject to an appeal bond.

The Court of Appeals of Franklin County, Ohio rendered its decision on December 14, 1971, overruling defendant's assignments of error and affirming the judgment of the trial court. Thereafter, counsel for defendant filed a timely motion for leave to appeal from the Court of Appeals to the Ohio Supreme Court; however, such motion was overruled. The case now comes before this Honorable Court upon Marie Baldassaro's petition for a writ of certiorari to the Supreme Court of the United States.

STATEMENT OF FACTS

During the spring of 1970 the defendant-appellant, Marie Baldassaro, was serving time in the Franklin County

Correctional Institute for Women, under sentence for a "numbers" conviction returned in 1969. On March 11, 1970 Miss Baldassaro was called before the lawfully convened Franklin County Grand Jury which was investigating possible violations of R.C. 2917.01 (Bribery), and numbers offenses. (Tr. 23). From those Grand Jury proceedings a bill of indictment against Captain Jerry Ryan of the Columbus Police Department, was rendered, Count 4 of which alleged the receipt by Captain Ryan of illicit funds paid to him by Officer Wilbur Stevens, also of the Columbus Police.

During the aforesaid proceedings of the Grand Jury Miss Baldassaro was asked several questions concerning her acquaintance with certain Columbus Police Officers, having first sworn to the oath administered by the Grand Jury Foreman. (Tr. 11, 23).

During the proceedings Miss Baldassaro was given an opportunity, upon her request, to consult with her attorney in private for approximately ten minutes. (Tr. 16, 26).

At Marie Baldassaro's subsequent trial for perjury Mr. John W. Saffell, who had been a court reporter for ten years and who had transcribed the proceedings, and Mr. George Snodgrass, Grand Jury Foreman, testified as to her answers to those questions.

Mr. Saffell testified that the question had been asked, "Do you know any members of the Columbus Police Department who are either officers now or have been officers on the Columbus Police Department?" (Tr. 14). He verified the form of the question, and Miss Baldassaro's *negative* response (Tr. 14), by referring to his notes. Mr. Saffell further testified that Miss Baldassaro had been asked if she knew Officer Melvin Helmandollar, and replied that she did not.

Mr. Snodgrass attested to the nature of the proceeding and to the fact that Miss Baldassaro had been informed of the same. (Tr. 24).

At the defendant-appellant's perjury trial Officer Helmandollar, himself previously involved in charges relating to bribery offenses, testified that he had been a member of the Vice Squad, primarily gambling (Tr. 30), that in such a capacity he had come to know Marie Baldassaro (Tr. 32, 33), and identified her at trial (*Id.*).

Officer Helmandollar also stated that he had had conversations with Miss Baldassaro while he was a police officer and, that he had received money from her during the time he was with the Vice Squad, while in the presence of Officer Wilbur Stevens. Helmandollar contended, however, that the money was a gift ("People just give officers money for rendering public service, don't they?") (Tr. 44).

Officer Phillip Henry, formerly of the Vice Squad testified for the prosecution also, stating that he had visited the beauty salon of a Mrs. Mietta, (Miss Baldassaro's sister) with Officer Robert ("Tal") Brodt, and was introduced ("more or less") to Marie Baldassaro at the salon. (Tr. 60). Officer Brodt did the talking. Mrs. Mietta had later visited Officer Brodt while he was in the hospital; Officer Henry was there too, but he couldn't recall if Marie Baldassaro was present. (Tr. 61).

The final testimony at trial was that of Marie Baldassaro. She recalled being shown a list of names of Columbus Police officers by the Grand Jury, but was shown no pictures. (Tr. 71-72). She denied knowing their names. (Tr. 72). Miss Baldassaro denied having known Melvin Helmandollar by name until he appeared at the Grand Jury proceeding. (Tr. 80). As to whether she had ever met Officer Brodt—she did not recall knowing Officer Brodt, and she "really didn't know" whether or not she visited Officer Brodt at Mercy Hospital. (Tr. 80).

To test the defendant-appellant's credibility the prosecutor inquired into her arrest record. Miss Baldassaro was asked: "And over 20 years, how many times would you say you have been arrested in connection with numbers?" Her reply was: "Once". The prosecution then brought out the record to show that she had been arrested three times (Tr. 87), and had been convicted twice. (Tr. 88). She then stated that at the time of her arrest on her last conviction she had been making numbers collections in Columbus. (Tr. 96-98).

Finally, Miss Baldassaro was asked if she recalled being asked by the Grand Jury if "she knew any members of the Columbus Police Department who are either officers now or have been officers on the Columbus Police Department?" She could not recall the question being asked, or that she had answered, "No." (Tr. 97-99).

At the close of the case for both sides the Court dismissed part (b) of the indictment relating to false testimony as to payment of present or former police officers. (Tr. 103).

Following the Court's instructions and deliberation, the jury returned a verdict of guilty as charged in paragraph (a) of the perjury indictment, (Tr. 118), relating to Miss Baldassaro's past acquaintance with police officers.

ARGUMENT

As To Question 1:

Section 2917.25, Ohio Revised Code, defines the elements of perjury as follows:

"1) the willful and corrupt statement of a falsehood

"2) as to a material matter

"3) under oath lawfully administered

"4) said oath being required by law, and

"5) before a court or tribunal

"6) lawfully convened within the jurisdiction."

The testimony which was the substance of Marie Baldassaro's perjury conviction was given at a lawfully convened proceeding of the Franklin County Grand Jury, under a mandatory oath administered by the foreman pursuant to the terms of Section 2939.13, Ohio Revised Code. Of the elements which are left, it is significant to note that petitioner attacks only the definition of *"a material matter"* to support her claim that said statute is unconstitutional.

The indictment charging Marie Baldassaro with perjury contained two alleged falsehoods uttered by Miss Baldassaro during her grand jury testimony. Admittedly, one of these falsehoods (paragraph b) lacked the necessary proof and was dismissed at trial; however, the defendant was convicted of perjuring herself with respect to paragraph (A), i.e. "she met and does know certain present or former officers of the Columbus Police Department." The petitioner attempts to support her attack on "materiality" by isolating the subject matter referred to and viewing it in the abstract. Although the materiality of the matter may be established even through that approach, it is more appropriate to analyze the materiality of the matter within the proper context of the Grand Jury investigation.

The inescapable conclusion is that Marie Baldassaro was well aware of the subject matter under investigation because her personal conduct was at issue and the prosecutor informed her of the nature of the inquiry. The subject matter being investigated was alleged bribes or "pay-offs" to Columbus Police Officers assigned to the Vice Squad. Therefore, the matter of Marie Baldassaro's involvement in the numbers game (for which she had been convicted), and her acquaintance with officers (or former officers) of the Columbus Police Department, was manifestly material to the purpose of the Grand Jury

bribery investigation, as the record of the trial below indicates, and as the jury so found under the proper instructions by the Court.

Petitioner appropriately cites 16 Am. Jur. 2d, Constitutional Law Section 552, pages 951 and 952, in relevant part, (Br. 5) to establish the requirement of definiteness with regard to criminal statutes. Viewing Ohio's perjury statute (2917.25 R.C.) within the context of the cited language compels a finding that the said statute fully comports with the due process requirements discussed in the quoted passage.

Stated in rather simple terms, the acts prohibited by Section 2917.25 O.R.C. are "lying under oath," and it is a relatively simple exercise to conform one's conduct to the law. One who affirms under oath to tell the truth is reasonably expected to do just that, and the conforming conduct is easily followed by refusing to lie. The additional requirement that the falsehood relate to a material element is a limiting protection favoring those testifying to foreclose indictments arising out of misstatements regarding inconsequential matters. Marie Baldassaro's testimony under oath was false with regard to a clearly significant fact relating to the investigation at issue.

Implicit in petitioner's argument is an analogy drawn between the term "material matter" under 2917.25 O.R.C. and the term "suspicion" used in a District of Columbia statute. However, such analogy is not applicable. While it is very difficult to ascertain the conduct necessary to avoid "suspicion," it is relatively simple to determine the conduct required to avoid a falsehood under oath, i.e. tell the truth. If there is any question regarding the materiality of the question posed, and the anticipated answer, difficulty can be avoided by speaking the truth in all instances, as the witness is expected to do. We respectfully submit that the statute as presently written

meets the due process requirements of constitutionality, and to invalidate the element of "material matter" as petitioner suggests, would broaden the scope of the statute rather than clarify or restrict it.

Under the facts of the instant case, petitioner knew that the question posed was material and she suffered no prejudice arising from the language of the statute.

As To Question 2.

In Ohio, in order to have an individual released from confinement to testify in a judicial proceeding, it is procedurally necessary to issue a subpoena *duces tecum* to the county Sheriff's office, to produce the named witness. Such a procedure was followed in the instant case. Petitioner's counsel may have no evidence that Miss Baldassaro was subpoened to appear because the proceedings were conducted in secret. Thus, petitioner appeared at the Grand Jury hearing pursuant to a valid subpoena.

In her capacity as a duly subpoened witness before the Grand Jury of Franklin County, petitioner was not entitled to the constitutional rights commonly referred to as the "Miranda Warnings." The case *Miranda* v. *Arizona* (1966), 86 S.Ct. 1602 at p. 1612 clearly describes the circumstances under which such "warnings" are applicable, and the present case does not fall within such designated circumstances. Miss Baldassaro was not the subject of in-custody police interrogation. Counsel for petitioner are attempting to equate "inculpatory statements" with "lying under oath," and they can not be successful. This same reasoning is manifested throughout their argument relating to the Fifth Amendment protection against self-incrimination. Although it is well settled that a witness can not be compelled to incriminate himself, it is not a necessary concomitant of that axiom to anticipate that the witness will intentionally lie. Moreover, the statements

made by Miss Baldassaro came after her consultation with counsel, and such statements were used to prove perjury, not to implicate her in a scheme of bribery. In conclusion, it is important to correct a misstatement contained in petitioner's brief which reads, "Ohio does not have immunity statutes covering testimony of witnesses." (Br. 7). Section 2917.04 of the Ohio Revised Code (Appendix, Exhibit A), provides immunity upon the recommendation of the prosecuting attorney to witnesses testifying in bribery cases.

As To Question 3.

Upon the authority of the case *State* v. *DeHass* (1967), 10 Ohio St. 2d 230, the Franklin County Court of Appeals refused to reverse petitioner's conviction for perjury. The Ohio Supreme Court in *State* v. *DeHass*, held as follows:

> "A reviewing court may not reverse a judgment of conviction in a criminal case in a trial court, where the record shows that a guilty verdict was returned by a jury on sufficient evidence and where no prejudicial error occurred in the actual trial of the case or in the instructions given by the court."

This language is far different from stating that a higher court may not *review* a case, and it is simply inaccurate to state that "The Franklin County Court of Appeals in its reviewing decision stated that it could not review a case based on the manifest weight of the evidence." (Br. 8). If such were true, the Court of Appeals could have summarily dismissed Miss Baldassaro's appeal since the only assignment of error raised in that court was, "The verdict of the jury was against the manifest weight of the evidence and contrary to law." The fact that the court did review her conviction tends to destroy counsel's interpretation of the *DeHass* decision. The Court of Appeals reviewed the record and appropriately concluded

that Miss Baldassaro's conviction was supported by the manifest weight of the evidence. Since no prejudicial error was found to exist in the actual trial of the case or in the instructions given to the jury by the court, in fact prejudicial error was not even alleged, the affirmation of petitioner's conviction was adequately supported, and the Court of Appeals refusal to reverse Marie Baldassaro's conviction can not be taken to constitute a denial of Fourteenth Amendment rights.

The Supreme Court of Ohio, on June 9, 1972, in Case No. 72-202, overruled petitioner's motion for leave to appeal from the Franklin County Court of Appeals.

CONCLUSION

For the reasons stated hereinabove, it is respectfully urged that the petition for a writ of certiorari to the Supreme Court of the United States be denied.

Respectfully submitted,

GEORGE C. SMITH

George C. Smith
Prosecuting Attorney, Franklin County, Ohio
Member of Bar
Supreme Court of the United States

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief in Opposition was mailed this ..... day of November, 1972, to Jerry Weiner, 171 East Livingston Avenue, Columbus, Ohio 43215 and to William S. Friedman, 88 East Broad Street, Columbus, Ohio 43215, counsel for petitioner.

GEORGE C. SMITH

George C. Smith
Prosecuting Attorney, Franklin County, Ohio

EXHIBIT A

Section 2917.04 Ohio Revised Code.

2917.04 (12824-1). Bribery cases; immunity bath.

Whoever violates sections 2917.01 and 2917.03 of the Revised Code, is a competent witness against another person so offending and, on the recommendation of the prosecuting attorney and approval of the court, may be compelled to attend and testify in the same manner as any other person is in any court of record in any criminal proceeding prosecuted by the attorney general or any prosecuting attorney, for the violation of said sections, but no individual shall be prosecuted or subjected to any penalty for or on account of any transaction, matter, or thing concerning which he testifies or produces evidence, documentary or otherwise, before any such court or grand jury.